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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

RAD REFERRAL 12L-82

DATE RECEIVED: August 21, 2012

DATE ACTIVATED: November 1, 2012

EARLIEST SOL: October 15, 2016

LATEST SOL: January 31, 2017

SOURCE:

Internally Generated

RESPONDENT:

Ron Paul 2012 Presidential Campaign Committee,
Inc. and Lori Pyeatt in her official capacity as
treasurer

RELEVANT STATUTES:

2 U.S.C. § 434(b)
11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred Ron Paul 2012 Presidential Campaign Committee, Inc. and Lori Pyeatt in her official capacity as treasurer (the "Committee") to the Office of General Counsel ("OGC") for failing to disclose a total of \$501,700 in receipts and \$5,649.65 in disbursements on its 2011 October Quarterly and Year-End Reports. In response, the Committee acknowledges the reporting errors, but urges the Commission not to open a Matter Under Review ("MUR") because the Committee discovered the errors and amended the reports before RAD questioned the reports' accuracy. The Committee further asserts that the filing of the amendments satisfied the Commission's Best Efforts Statement of Policy, so they may not serve as the basis for an enforcement action. We recommend that the Commission open a MUR and find reason to believe that the Committee violated 2 U.S.C. § 434(b) by failing to

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report receipts and disbursements accurately. Additionally, we recommend that the Commission enter into pre-probable cause conciliation with the Committee

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

On January 31, 2012, and April 18, 2012, the Committee filed amendments to its 2011 October Quarterly Report, which disclosed additional receipts not included in the original report. On February 20, 2012, and April 18, 2012, the Committee filed amendments to its 2011 Year-End Report, disclosing additional receipts and disbursements; the second amended report disclosed no change in receipts and disbursements from the previously filed amendment. The additional activity not included in the original reports is reflected in the chart below.

Report	Date of Final Amendment	Increased Receipts	Increased Disbursements	Total
2011 October Quarterly	April 18, 2012	\$1,700	NA	\$1,700
2011 Year-End	April 18, 2012	\$500,000	\$5,649.65	\$505,649.65
	TOTAL	\$501,700	\$5,649.65	\$507,349.65

On March 14, 2012, RAD sent the Committee a Request for Additional Information ("RFAI"), asking the Committee to "provide an explanation to clarify why this additional activity was not provided with your original" 2011 October Quarterly and Year-End Reports. Responding to the RFAI, the Committee filed a Miscellaneous Document ("Form 99") on April 18, 2012, stating that:

The increase in receipts of \$1,700.00 and increase in disbursements of \$1,700.00 on the 2011 October Quarterly Amended Report consists of

seven in-kind contributions that were inadvertently left off of the original filing.¹

The increase in receipts of \$500,000.00 on the 2011 Amended Year-End Report is a committee transfer from the Committee to Re-Elect Ron Paul that was inadvertently left off of the original filing. The amended report was filed to properly report this transfer.

The increase in disbursements of \$5,649.65 on the 2011 Amended Year-End Report is the net effect of corrections made regarding expenses. All expenses requiring to be itemized now show on the amended filing.²

On May 17, 2012, the Committee filed another Form 99, which stated:

This letter is to provide additional information regarding the initial unreported committee transfer of \$500,000 on December 1, 2011 received by the Ron Paul 2012 Presidential Campaign Committee, Inc. from the Committee to Re-Elect Ron Paul. The transmission of the transfer by the Committee to Re-Elect Ron Paul was correctly reported on their 2011 Year-End Report, but the receipt of that transfer was inadvertently omitted from the Ron Paul 2012 PCC's 2011 Year-End Report. A report was corrected, amended and filed upon discovery of the omission within three weeks of the original filing. Both committees have reviewed and revised their procedures for handling and reporting committee transfers to ensure that this error will not be repeated.

RAD referred the Committee to OGC for failing to disclose additional receipts totaling

\$501,700 and additional disbursements totaling \$5,649.65. See Memorandum from Patricia C.

¹ The \$1,700 figure reflects the contribution of a gold coin jointly owned by seven individuals. See discussion *infra*. In-kind contributions are normally reported as both receipts and expenditures under 11 C.F.R. § 104.13(b) so that cash-on-hand will not be inflated. In order to avoid double-counting, the gold coin is treated here only as a receipt.

² On April 20, 2012, the Committee filed a Form 99, which stated:

While preparing a response to the recent RFAI letters, the Campaign discovered a significant amount of instances in which contributors provided slightly different name and/or address information when making online contributions that prevented their contributions from being aggregated correctly in the computer database records. The campaign has corrected those errors and taken steps to minimize the likelihood that problem will occur in the future. Amended reports have been filed from the inception of the Campaign to date to correct those reporting discrepancies.

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1 Orrock, Chief Compliance Officer, Federal Election Commission, to Anthony Herman, General
2 Counsel, Federal Election Commission (Aug. 21, 2012) ("Referral").³ On August 28, 2012,
3 OGC notified the Committee of the Referral in accordance with the Commission's procedure
4 regarding notification in non-complaint generated matters. *See* 74 Fed. Reg. 38617 (Aug. 4,
5 2009). In its response to the notification, the Committee provided information regarding the
6 circumstances surrounding the increased activity disclosed on its amended reports that
7 supplemented the information it had provided on the Form 99s. *See* Letter to Jeff S. Jordan,
8 FEC, from Brett G. Kappel (Oct. 12, 2012) ("Response").

9 According to the Committee, the additional receipts of \$1,700 on the 2011 October
10 Quarterly Report reflect the contribution of a gold coin. *Id.* at 4. The Committee acknowledges
11 that, according to Commission advisory opinions and regulations, a coin that is not U.S. currency
12 should be treated as an in-kind contribution of a commodity to be liquidated, valued at the fair
13 market value of the commodity on the date it was received by the Committee and reported during
14 the reporting period in which the coin was received, even if it has not been liquidated by the end
15 of the reporting period. *Id.* (citing Advisory Opinions 1980-125 (Cogswell) and 1987-32
16 (Polster) and 11 C.F.R. § 104.13(b)(1)). The Committee asserts, however, that when the
17 Committee's staff prepared the original 2011 October Quarterly Report, it "was under the
18 impression" that the in-kind contribution was not reportable until it was liquidated. *Id.* When
19 the treasurer and staff were preparing the 2011 Year-End Report, they noted the in-kind

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³ The Committee was referred in accordance with RAD's 2011-2012 Review and Referral Procedures, in which the Commission established a new threshold for referring increases or decreases in activity that aggregate over on amendments filed to reports covering the current election cycle, the previous election cycle, or both election cycles that were received during the current election cycle. *See 2011-2012 RAD Review and Referral Procedures for Authorized Committees* at 75.

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1 contribution was an unresolved issue, consulted with counsel, and amended the 2011 October
2 Quarterly Report. *Id.*

3 In its Response, the Committee also explained the omitted receipt of the \$500,000
4 transfer from another committee that has the same treasurer and campaign staff. The Response
5 states that during the preparation of the original 2011 Year-End Report, campaign staff
6 remembered entering the information regarding the transfer into the computer system used by
7 both committees and "incorrectly thought that the information had been entered as a receipt"
8 from the transferring committee and would be reflected on the Committee's report.⁴ *Id.* at 2-3.

9 The Response maintains that the increased activity referenced in the Referral does not
10 justify opening a MUR as the Committee amended its reports before RAD raised any question
11 concerning their accuracy. The Committee notes that it amended its report with respect to the
12 omitted \$500,000 receipt within three weeks of the original report and additionally notes that the
13 transferring committee had reported it as an expenditure on its 2011 Year-End Report two weeks
14 before the Committee's 2011 Year-End Report was due. *Id.* at 5. Moreover, according to the
15 Response, the filing of the amended 2011 October Quarterly and Year-End Reports "fit squarely
16 within the Commission's Best Efforts Statement of Policy and, accordingly may not be the basis
17 for an enforcement action." *Id.* The Committee asserts that it was able to amend its incorrect
18 reports promptly "precisely because" the Committee had met the best efforts requirements, in
19 particular because the Committee had trained its staff to double check its recordkeeping entries
20 and regularly reconcile the Committee's records with bank statements. *See id.* at 5-6.

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⁴ The Response also notes that, although this one transaction was omitted from the 2011 Year-End Report, that report was over 10,000 pages long and disclosed "tens of thousands of individual transactions, including more than \$13,000,000 in receipts." Resp. at 2.

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B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended, (the "Act") requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 2 U.S.C. § 434. *See* 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the total amount of receipts and disbursements. *See* 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. The Act also requires committees to disclose itemized breakdowns of receipts and to disclose the name and address of each person who has made any contribution in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution. *See* 2 U.S.C. § 434(b)(2)-(6); 11 C.F.R. § 104.3(b)(3)-(4).

The Act provides that "when the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act" 2 U.S.C. § 432(i); and 11 C.F.R. § 104.7(a). The Commission has noted that it would consider the best efforts of a committee under 2 U.S.C. § 432(i) when reviewing all violations of recordkeeping and reporting requirements of the Act, whether arising in its traditional enforcement docket, audits, or the ADR program. *See Statement of Policy Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act*, 72 Fed. Reg. 31438, 31440 (June 7, 2007) ("Best Efforts Policy Statement"). The Commission has stated that the "best efforts standard is an affirmative defense and the burden rests with the political committee and its treasurer to present evidence sufficient to demonstrate that best efforts were made." *Id.*

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Contrary to the assertions in the Response, except for amending its original reports, the Committee has made an inadequate showing that its actions “squarely fit” the Commission’s Best Efforts Policy Statement. The focus of the Committee’s “best efforts” defense argument rests entirely on the steps taken after it filed its original reports. The Response, however, makes no mention of the actions employed by its staff, and in particular, its treasurer, to ensure the accurate disclosure of its receipts and disbursements during the time it prepared the original reports. The Commission has specifically noted that it would take into consideration certain factors in determining whether the “best efforts” defense standards have been satisfied, including (1) whether the committee *at the time of its failure* took relevant precautions to prevent a reporting failure; (2) whether the committee had trained staff responsible for obtaining, maintaining, and submitting campaign finance information in the Act as well as the committee’s procedures, recordkeeping systems, and filing systems; (3) whether the reporting failure was the result of unforeseen circumstances beyond the control of the committee; and (4) whether, upon discovering the failure, the committee took all reasonable additional steps to expeditiously file any unfiled reports and correct any inaccurate report. *Id.* at 31440 (emphasis added).

As indicated in the Commission’s Best Efforts Policy Statement, the “best efforts” defense takes into consideration actions taken to avoid reporting errors and omissions and incomplete recordkeeping, not solely actions taken to correct errors after the fact. In applying the defense, the Commission has required that more specific proactive efforts be undertaken by a committee prior to the occurrence of a filing lapse than has been demonstrated by the Committee in this matter. *See* MUR 6508 (Republican National Committee), Factual and Legal Analysis 5-6 (rejecting the application of the best efforts defense where the Respondents did not take relevant precautions to prevent a reporting failure at the time of the original report filings). For

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1 example, while the Response speaks of the Committee's prompt corrective actions taken after
2 discovering the omitted reporting of \$500,000 in receipts, it does not address whether the
3 Committee took the relevant precautions (such as double checking recordkeeping entries and
4 reconciling records) at the time of its failure or whether the Committee had maintained adequate
5 procedures and filing systems to avoid the reporting errors on its original 2011 Year-End Report.
6 The only information about the pertinent time-period provided in the Response is that, when
7 preparing the original report, the staff remembered it had entered information into the computer
8 regarding the \$500,000 transfer from the transferring committee, and it incorrectly thought the
9 information had also been entered as a receipt by the Committee. *See Resp. at 2-3.*

10 Likewise, with respect to omitting the \$1,700 in-kind contributions on its original 2011
11 October Quarterly Report, the Response states that at the time the Committee was preparing that
12 report, its campaign staff was under the misimpression that the contributions were not reportable.
13 Only when they were later preparing the 2011 Year-End Report did the treasurer and the
14 campaign staff note the "in-kind contribution as an unresolved issue and consulted with counsel
15 regarding" it, which led to the amendments. *Resp. at 4.* The Commission has stated, however,
16 that a "committee's failure to know or understand the recordkeeping and filing requirements of
17 the Act" does not satisfy the best efforts defense. *Best Efforts Policy Statement, 72 Fed. Reg. at*
18 *31440.* Moreover, the Committee does not assert that the reporting failures resulted from any
19 unforeseen circumstances and it does not appear they did so.

20 In short, the Committee concededly made errors when it filed its original 2011 October
21 Quarterly and Year-End Reports. The Best Efforts Policy Statement provides that the
22 Commission will generally conclude that a committee has not met the best efforts standards if its
23 reporting failures result from, among other things, the inexperience, negligence or error of

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1 committee staff, and failure on the part of the Committee to know the recordkeeping and filing
2 requirements of the Act. 72 Fed. Reg. at 31440. Accordingly, the Commission should conclude
3 that the Committee has not met the best efforts standard in this matter.

4 As the Committee acknowledges, it did not comply with the Act's reporting
5 requirements when it failed to disclose a total of \$501,700 in receipts and \$5,649.65 in
6 disbursements on its original 2011 October Quarterly and Year-End Reports. We therefore
7 recommend the Commission find reason to believe that the Committee violated
8 2 U.S.C. § 434(b).

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2 **IV. RECOMMENDATIONS**

3 1. Open a MUR.

4 2. Find reason to believe that Ron Paul 2012 Presidential Campaign Committee, Inc.
5 and Lori Pyeatt in her official capacity as treasurer violated 2 U.S.C. § 434(b).

6 3. Approve the attached Factual and Legal Analysis.

7 4. Enter into conciliation with Ron Paul 2012 Presidential Campaign Committee,
8 Inc. and Lori Pyeatt in her official capacity as treasurer prior to a finding of
9 probable cause to believe.

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11 5.
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6. Approve the appropriate letter.

Anthony Herman
General Counsel

12-24-12
Date

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